

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT BOSTON,)
)
Petitioner,)
) Civ. Action No. 04-51 (Erie)
vs.)
) Judge Sean J. McLaughlin
JOHN ASHCROFT,) Magistrate Judge Susan Paradise Baxter
)
Respondent.) filed electronically

**RESPONDENT'S SURREPLY IN SUPPORT OF
OBJECTIONS TO REPORT AND RECOMMENDATION**

AND NOW, comes Respondent, by his attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Christy Wiegand, Assistant U.S. Attorney for said district, and respectfully files this Surreply in support of his Objections to the Report and Recommendation (“R & R”).

1. In his Response to Respondent’s Objections, Petitioner argues that the Objections were untimely as they were filed with the Court on August 11, 2005.
2. The docket clerk’s entry on PACER notes that Objections to the R & R were due by 8/10/2005 – ten days from the day the R & R was entered. However, Magistrate Judge Baxter, in the R & R, ordered that the parties be allowed “ten (10) days from the date of service to file written objections to this Report and Recommendation.” Report and Recommendation, at 6 (emphasis added). This time frame – running from the date of service – comports with 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates.
3. Respondent was served electronically with the Magistrate’s R & R on August 28, 2005. Accordingly, Respondent’s Objections were due no later than August 11, 2005, the day they were,

indeed, filed and served.

WHEREFORE, for the foregoing reasons, Respondent respectfully requests that the Court consider his Objections to the Report and Recommendation as timely-filed, and, for the reasons set forth in those Objections, further respectfully requests that the Petition be denied.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

s/ Christy Wiegand
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CERTIFICATE OF SERVICE

I hereby certify that I have served this date a copy of the within *Respondent's Surreply in Support of Objections to Report and Recommendation*, by mail or electronic filing, upon the following:

Robert Boston
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FCI McKean
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s/ Christy Wiegand
CHRISTY WIEGAND
Assistant United States Attorney

Date: August 25, 2005